



**U.S. Department of Justice**

*United States Attorney  
Southern District of New York*

*The Silvio J. Mollo Building  
One Saint Andrew's Plaza  
New York, New York 10007*

February 20, 2018

**BY ECF**

The Honorable P. Kevin Castel  
United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

Re: **United States v. David Bergstein, 16 Cr. 746 (PKC)**

Dear Judge Castel:

The Government respectfully submits the following comments on the Court's proposed jury instructions:

- Page 30 top: delete the phrase "and then misappropriating a portion of the funds that were disbursed pursuant to those transactions for their own personal use and benefit."
- Page 31, first full paragraph: replace the first sentence with the following: "Count Six relates to an alleged conspiracy by the defendant and others to commit wire fraud in connection with a scheme to defraud investors in the P2 Fund and TT Portfolio."
- Page 31, first full paragraph: delete the phrase: "in connection with the same conduct."
- Page 40, last full paragraph: add "and Westchester County."
- Page 47-48: add sentence along the lines of the following: "An individual need not be a fiduciary in order to be proven guilty of aiding and abetting investment advisor fraud."
- Page 55, first line: after "wire communications," add "such as e-mail, and wire transfers of money."

The Government will be prepared to address the defendant's objections at a charge conference or at the Court's request.

Respectfully submitted,

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